S.B.Civil Misc.Appeal No.286/93
Dr.Jai Krishna vs. Bulaki Das Dargad & anr.

Date of Order: 14.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr.R.R.Nagori for the appellant.
Mr.D.K.Parihar for the respondents.

Heard learned counsel for the appellants.

This appeal is against the order dated 3.3.1993 passed on an application of the plaintiff-appellant filed under Order 39 Rule 1 and 2 C.P.C. The trial court partly allowed the application of the plaintiff-appellant and directed the defendants to make arrangements for discharge of filthy water from the safety tank so that it may not cause nuisance for the plaintiff's house by spreading foul smell. According to the learned counsel for the appellant, the court below though allowed the application of the plaintiff but did not grant full relief for connecting out-let with main sewer-line.

I perused the facts of the case. It appears that the suit was filed by the plaintiffs as back as in the year 1993 and the impugned injunction order was passed on 3.3.1993. By the impugned order, some arrangements have been made by the trial court giving relief to the plaintiff and by that the trial court directed the defendants to take measures by which the plaintiff may not suffer foul smell. So far as

other reliefs are concerned, for that it will be appropriate that the parties may lead their evidence and thereafter the appropriate order can be passed. In the facts and circumstances of the case, it will not be just and proper to grant such a more relief which may have substantially affected on the ultimate decision of the suit with respect to the rights of the parties particularly of the defendants. Apart from it, the position which is continuing for last about 13 years, now can continue for some more time.

Since the appellant had no option but to carry on with his position which is going on because of the impugned order passed by the trial court and because of the pendency of the appeal, therefore, the fact of continuation of the position after the order dated 3.3.1993 shall not come in the way of the plaintiff for establishing his right in the suit.

The appeal is, therefore, dismissed with above observations and the trial court is requested to decide the suit expeditiously, preferably within one year from the date of receipt of the record. The record of the court below be sent forthwith.

(PRAKASH TATIA),J.

mlt.